

Office Supreme Court, U. S.
FILED

MAY 16 1918

JAMES D. MAHER,
Clerk.

Supreme Court of the United States

OCTOBER TERM, 1917

No. ~~4~~ 483102

THE CUYAHOGA RIVER POWER COMPANY,
Appellant.
against

THE NORTHERN OHIO TRACTION AND LIGHT
COMPANY and THE NORTHERN OHIO POWER
COMPANY,

Appellees.

Appeal from the District Court of the United States for
the Northern District of Ohio, Eastern Division

MOTION TO ADVANCE

WILLIAM Z. DAVIS,
JOHN L. WELLS,
CARROLL G. WALTER,
Counsel for Appellant.



Supreme Court of the United States,

OCTOBER TERM—1917.

THE CUYAHOGA RIVER POWER
COMPANY,

Appellant,

against

THE NORTHERN OHIO TRACTION
AND LIGHT COMPANY and THE
NORTHERN OHIO POWER COM-
PANY,

Appellees.

No. 1012.

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION.

Motion to Advance.

Now comes the above named appellant and moves the court to advance this cause and set the same down for argument as soon after the opening of the next term as may be convenient.

The following is a brief statement of the facts and matter involved and of the reasons for the application:

The appeal is from a decree dismissing a bill in equity pursuant to the granting of a motion to dismiss on the ground that the bill failed to state

facts sufficient to constitute a valid cause of action in equity.

This is the *fourth* case which has come to this court involving a consideration of the rights of the present appellant (See *Cuyahoga River Power Co. v. Akron*, 240 U. S., 462; *Cuyahoga River Power Co. v. Northern Realty Co.*, 244 U. S., 300; *Sears v. Akron*, decided March 4, 1918).

Broadly speaking, the appeal presents the federal questions which we claimed were involved and which were argued in *Cuyahoga River Power Co. v. Northern Realty Co.*, *supra*, but which this court then declined to consider because it was of the opinion that the failure of the record to show that the judgment there sought to be reviewed rested upon the federal questions rather than upon the state questions deprived this court of jurisdiction. More specifically, the appeal presents the questions whether the incorporation of the appellant and its adoption of its location gave to the appellant a contract and property right, as against third persons, to the lands and waters covered by its charter and location—a question which, as we understand it, was expressly left open by this court in its opinion in *Sears v. Akron*, *supra*—and whether that right has been unconstitutionally impaired and taken.

The present suit was commenced in August, 1916. Owing to the then-existing and long-continued vacancy in the judgeship of the district and the subsequent appointment of Judge WESTENHAVER, who was disqualified because of his prior association as counsel for the appellant, a hearing upon the defendants' motion to dismiss was not obtainable until June, 1917, when the same was argued before and submitted to Judge KILLITS.

No decision upon the motion was rendered until March, 1918. An appeal was immediately taken and docketed in this court.

In view of the fact that the appellant already has suffered unusual delay in obtaining a decision upon the sufficiency of its bill, in view of the fact that the important and controlling questions have been heretofore argued before this court in other cases without any decision upon them being obtained, and in view of the further fact that progress upon an important enterprise which will be of great benefit to the public, both as a conservancy measure and as affording cheap power without the use of coal, necessarily awaits a determination of the pending litigation, it is respectfully submitted that special and peculiar circumstances exist which warrant a hearing of this cause out of its usual order upon the docket. For these reasons an advancement of the case is hereby prayed.

Respectfully submitted,

WILLIAM Z. DAVIS,
JOHN L. WELLS,
CARROLL G. WALTER,
Counsel for Appellant.

Notice of motion to advance.

Sirs:

Please take notice that the appellant, The Cuyahoga River Power Company, will submit the foregoing motion to advance to the Supreme Court of the United States at a Stated Term thereof on Monday, June 3, 1918, at the Capitol in the City

of Washington, D. C., at the opening of court
on that day or as soon thereafter as counsel can
be heard.

Dated, May 9, 1918.

Yours, etc.,

WILLIAM Z. DAVIS,
JOHN L. WELLS,
CARROLL G. WALTER,
Counsel for Appellant.

To

S. H. TOLLES, Esq.,
Counsel for Appellees,
Williamson Building,
Cleveland, Ohio.